

PAUL DAVIS,)	
)	
Petitioner,)	2:12-cv-00984-JCM-PAL
)	
vs.)	ORDER
)	
D.W. NEVEN, <i>et al.</i> ,)	
)	
Respondents.)	
	/	

Respondents filed a motion to dismiss the petition on December 12, 2012. (ECF No. 6). Plaintiff filed two motions for extensions of time to respond to motion to dismiss. (ECF Nos. 11 & 12). These motions are granted *tunc pro tunc*, such that petitioner's response to the motion to dismiss is timely. On February 8, 2013, petitioner filed a response to the motion to dismiss in which he requests leave to file an amended petition. (ECF No. 14). On the same date, petitioner's amended petition was filed by the clerk of court. (ECF No. 13). Good cause appearing and in the interests of justice, petitioner's motion to amend is granted. Fed. R. Civ. P. 15(a)(2). This action

1 shall proceed on the amended petition, filed February 8, 2013. (ECF No. 13). Respondents' motion
2 to dismiss is denied without prejudice. The court will set a new deadline for a response to the
3 amended petition, as set forth at the conclusion of this order.

4 Petitioner has filed a motion to proceed *in forma pauperis*. (ECF No. 17). The motion is
5 denied as moot, as petitioner has previously paid the filing fee for this action.

6 Petitioner has filed a motion for the appointment of counsel. (ECF No. 18). There is no
7 constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v.*
8 *Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The
9 decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th
10 Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.
11 1984), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities
12 of the case are such that denial of counsel would amount to a denial of due process, and where the
13 petitioner is a person of such limited education as to be incapable of fairly presenting his claims. *See*
14 *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The amended
15 petition on file in this action is sufficiently clear in presenting the issues that petitioner wishes to
16 bring. The issues in this case are not complex. Counsel is not justified in this instance. The motion
17 for the appointment of counsel is denied.

18 **IT IS THEREFORE ORDERED** that petitioner's motions for extensions of time (ECF
19 Nos. 11 & 12) are **GRANTED**, *nunc pro tunc*, such that petitioner's response to the motion to
20 dismiss is timely.

21 **IT IS FURTHER ORDERED** that petitioner's motion to file an amended petition (ECF No.
22 14) is **GRANTED**. This action **SHALL PROCEED** on the amended petition, filed February 8,
23 2013, at ECF No. 13.

1 **IT IS FURTHER ORDERED** that respondents' motion to dismiss (ECF No. 6) is **DENIED**
2 **WITHOUT PREJUDICE** to renewing such arguments, if applicable, in response to the amended
3 petition.

4 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from entry of
5 this order within which to answer, or otherwise respond to, the amended petition. In their answer or
6 other response, respondents shall address all claims presented in the amended petition. Respondents
7 shall raise all potential affirmative defenses in the initial responsive pleading, including lack of
8 exhaustion and procedural default. Successive motions to dismiss will not be entertained.

9 **IT IS FURTHER ORDERED** that petitioner's motion to proceed *in forma pauperis* (ECF
10 No. 17) is **DENIED** as moot.

11 **IT IS FURTHER ORDERED** that petitioner's motion for the appointment of counsel (ECF
12 No. 18) is **DENIED**.

13 Dated this 28th day of June, 2013.

14
15 James C. Mahan
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26